

The background of the slide features a blue gradient with a series of stylized, 3D human figures in a light blue color. These figures are arranged in a line, holding hands, and are rendered with a sense of depth and perspective. A dark blue vertical bar is positioned on the left side of the slide, partially overlapping the figures. A white rectangular box is located at the bottom of the slide, containing the title and speaker information.

Employment Law Update 2010

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From the Courts



- Wrongful Discharge
- Employment Contracts
- Collective Bargaining
- Workers' Compensation
- Discrimination
- Wages



Wrongful Discharge



- WDEA Arbitration
 - Penalty will be enforced against the Employee
 - Employer wins
 - fees awarded
 - *Prescott v. Innovated Resource Group LLC*
 - It isn't always cheaper
 - Employer loses;
 - pays fees
 - and \$840,078
 - *Ferrin v. Hewlett Packard*
- “Constructive Discharge”
 - Sales Territory too big to be “doable”
 - *Johannsen v. Nike* (9th Cir.)
- Good Cause
 - false time reports
 - *Christie v. DEQ*
 - pot payments in the courthouse
 - *Dean v. Sanders County*
 - but not all economic layoffs
 - *Powers v. PAR Electrical Contractors*



Employment Contracts



- Non-Compete Agreement must be “reasonable”
 - Exceptions
 - sale of goodwill
 - dissolved partnership
 - Mungas v. Great Falls Clinic



- CBA's
 - Unless it says so, public employee's discrimination claims are not covered by CBA
 - Edwards v. Cascade County
 - Court won't review merits of an arbitrator's decision
 - if it stems from the agreement to arbitrate, i.e. the CBA
 - But see above.
 - Teamsters v. C.N.H. Acquisitions

Workers' Compensation



- Payback
 - Employee who has other income and lies about it will pay it back
 - *Roche v. MMIA*
- Drunk Driver gets benefits
 - Employer knew and didn't stop him
 - *Heth v. State Fund*
- Social Security ends benefits
 - Court finally decides
 - *Satterlee v. Lumberman's Mutual*
- Mere Allegation of Intent to Injure means employee may get to sue you.
 - *McKinnon v. Western Sugar Coop.*

Wages



- Minimum Wage
 - \$7.25 this year
 - Excluding Tips
 - Tied to COL every September
- Still \$4 for small business
 - annual gross sales \$110,000 or less
 - no interstate work
- Watch out for misclassification
 - non-exempt employee must be compensated for past overtime if you make a mistake.
 - or twice as much if you lose in court
 - and attorney fees
 - Tacke v. Energy West

Commissions



When do you say it is due?
at sale?
at delivery?
when the customer pays?
when the check clears?
You had better decide!



If it is not in writing, Court will go with Employee's interpretation

Talon v. Mont. Dept. of Labor and Industry.

Miscellaneous



- Top Hat Agreement
 - Post retirement deferred compensation contracts
 - If retirees are not notified that employer in bankruptcy might reject contracts
 - Employer pays
 - \$15.5 million compensatory
 - \$4 million punitive damages
 - Individual officers can be liable
 - » Ammondson v. Northwestern Corp.

P.S. Butte Jury doesn't hurt!

Discrimination



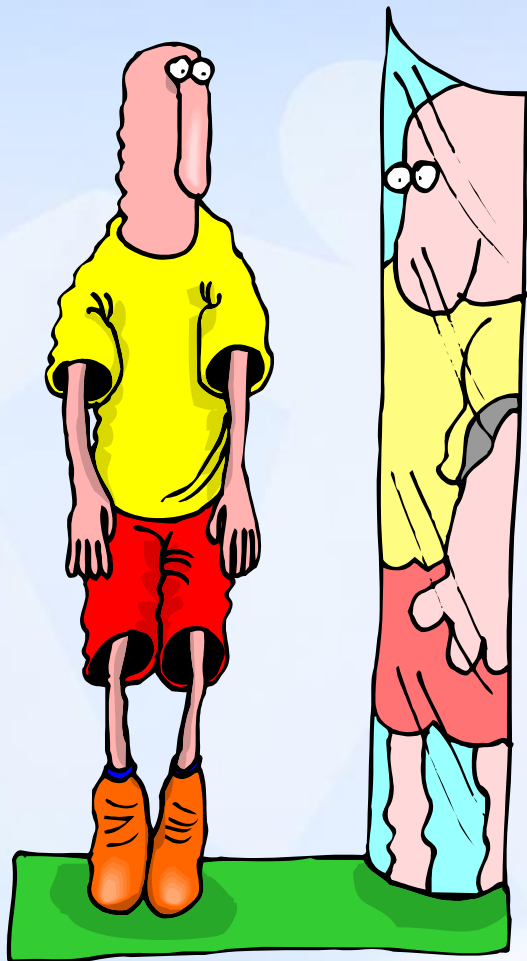
HRB investigative report is not admissible
in court proceeding. *Stevenson v. Felco Industries*

And neither is an unemployment decision.

39-59-110 MCA



Discrimination



- Age limit is out
 - can't condition employment on age
 - Jaksha v. Butte Silver Bow
- Regarded as morbidly obese means regarded as disabled
 - Mont. DLI v. BNSF Railway

Marital Status Discrimination



- Can't punish wife for husband's poor performance.
 - employer gave free apartment
 - fired husband for poor work
 - then fired wife
 - cost him \$30,409
 - *Mercer v. McGee*

Public Employees



Cannot be punished
for “political ideas”

If discrimination based
on such ideas, it is
addressed under the
Human Rights Act

Failure to file with HRB
means no court case

Edwards v. Cascade County Sheriff's Dept.



The Legislature



- Medical Marijuana
 - employers do not have to accommodate
 - have a policy
 - » *Johnson v. Columbia Falls Aluminum Co.*
- Employees elected or appointed to public office get leaves of absence and their jobs back.
 - must have 10 or more employees
 - doesn't say you can't prohibit them from running?

From the Government



- FLSA
- Mental Health Parity
- ARRA
- FMLA regs
- ADA
- GINA
- And other interesting ideas





- Breast feeding
 - NEW: reasonable break time for nursing mothers to express breast milk
 - if FLSA applies to employer
 - for up to one year from birth
 - any time she needs it
 - doesn't have to be paid
 - Note: Montana has a similar law,
 - but it only applies to *public* employers
 - » §§39-2-215, -216, -217, MCA



Mental Health Parity



- Regs effective July 1, 2010
- 50 Employees
 - if mental health or substance abuse benefits are offered
 - can't be less restrictive than
 - other benefit standards.
 - financial
 - management standards
 - limits on treatment
 - exclusions
 - etc.



ARRA – COBRA Subsidy



- Extended for terminations through May 31, 2010
- Involuntary termination
- Elects COBRA continuation
- Employer pays 65% of Premium
- Employee pays 35%
- Employer deducts on tax return
- Also extends federal unemployment benefits retroactively to June 2

FMLA: Military leave



Eligible employees are entitled to up to 12 weeks of leave because of “**any qualifying exigency**” arising out of the

- fact that the spouse, son, daughter, or parent of the employee is on active
 - duty, or has been notified of an impending call to active duty status, in support
 - of a contingency operation.
-
- By the terms of the statute, this provision
 - requires the Secretary of Labor to issue regulations defining “any qualifying
 - exigency.” In the interim, employers are encouraged to provide this type of
 - leave to qualifying employees.

Qualifying Exigencies



- Help with financial affairs
- Help with arrangements for care of family
- Greet returning relative
- Send relative off
- Counseling
- Child care
- 5 days for R&R
- Must have some connection with the relative being called to active duty



Military Leave Entitlement



- An eligible employee who is the spouse, son,
- daughter, parent, or next of kin of a covered servicemember who is recovering
- from a serious illness or injury sustained in the line of duty on active
- duty is entitled to **up to 26 weeks of leave** in a single 12-month period to
- care for the servicemember.
- upon enactment. This military caregiver leave is available during “a single
- 12-month period” during which an eligible employee is entitled to a combined
- total of 26 weeks of all types of FMLA leave.
- Additional information on the amendments and a version of Title I of the FMLA with the
- new statutory language incorporated are available on the FMLA amendments Web site

New FMLA Regulations



- Look back 5 years for 12 months of service
- 2 visits in 30 days
- Periodic means at least 2 times a year
- Employees need to give prompt notice
- Can't claim they gave notice by calling in sick
- Employers could give online notice
- Must tell employees in 5 business days if they are eligible
- Employer would be liable for actual harm if they fail to give notice

Certification procedures



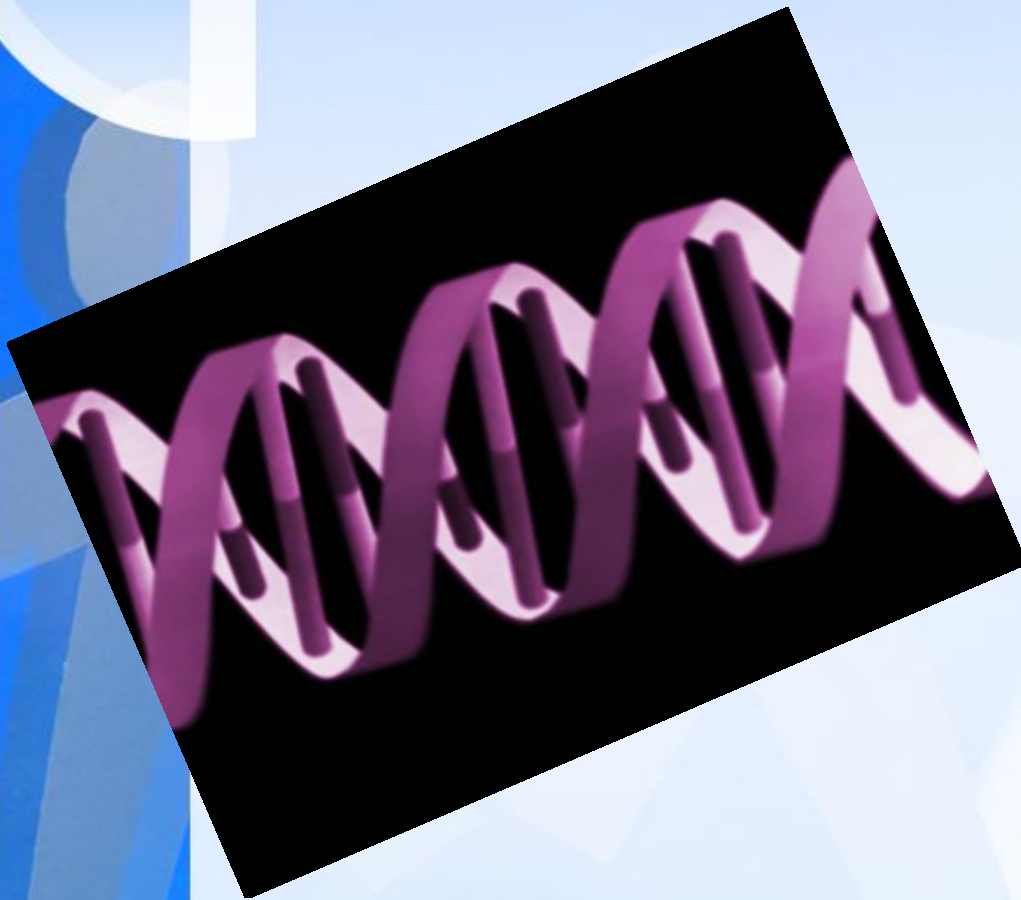
- Revised form
- Employers may deal directly with providers
- Could require provider to use job description in fitness for duty certification

ADA Amendments Act of 2008



- Expands “disabilities” definition to include:
 - more major life activities
 - and impairments of bodily systems
 - impairments that can be mitigated with medication or devices
 - impairments that are “episodic or in remission” are still disabilities
 - but does not apply to those with a duration of 6 months or less

GINA (Genetic Information Nondiscrimination Act)



- Cannot fire, refuse to hire, or otherwise discriminate
- On the basis of genetic information
- Effective for employers in November 2009

Things to look for down the road



- Employee Free Choice Act
 - no secret ballot union elections
 - probably not this year
- Healthy Families Act
 - 15 employees
 - 56 days paid sick leave
 - for self and family members
 - introduced but not going anywhere at the moment





The End